WEST VIRGINIA CODE: §3-4A-26

§3-4A-26. Test of automatic tabulating equipment.

(a) One week prior to the start of the count of the votes recorded on ballots or screens, the clerk of the county commission shall have the automatic tabulating equipment tested to ascertain that it will accurately count the votes cast for all offices and on all measures. This test shall consist of a test of the entire voting system, including removal of data from a vote-recording device and its transferral to automatic tabulating equipment. The county commission shall give public notice of the time and place of the test not less than forty-eight hours nor more than two weeks prior to the test by publication of a notice as a Class I-0 legal advertisement in the county involved, in compliance with the provisions of article three, chapter fifty-nine of this code.

(b)(1) Vote-recording devices used and tested for early voting may also be used on election day upon compliance with all of the following requirements:

(A) Following the close of early voting, the personal electronic ballot and the programable memory chip shall be removed and replaced with another personal electronic ballot and programable memory chip prepared for, but unused during, the current election period;

(B) The printed paper trail used during the early voting period shall be removed and replaced with a new paper trail; and

(C) The vote-recording device shall be retested prior to being used on election day.

(2) Any personal electronic ballot programable memory chip and printed paper trail removed from a vote-recording device used for early voting shall be securely stored by the county clerk until such time as it is used to tally the votes on election day in accordance with section twenty-seven of this article.

(c) (1) A test performed pursuant to this section shall be open to representatives of the political parties, candidates, the press and the public. It is to be conducted by processing a set of preaudited ballots marked to record a predetermined number of valid votes for each candidate or each measure. For each multicandidate office, the test shall include one or more ballots which have cross-over votes in order to test the ability of the automatic tabulating equipment to record those votes in accordance with the provisions of this article and any other applicable law. For each office, the test shall include one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject votes. If, in the process of any of the test counts, any error is detected, the cause of the error is to be ascertained and corrective action promptly taken. After the completion of the corrective action, the test counts are to continue, including a retesting of those precincts previously test counted. Prior to the continuation of the testing, the county commission shall certify in writing, signed by each

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commissioner, the nature of the error, its cause and the type of corrective action taken. The certification shall be recorded in the office of the clerk of the county commission in the record book. Immediately after conclusion of this completed test, a certified duplicate copy of the test results shall be sent by certified mail to the offices of the state Election Commission, where it is to be preserved and secured for one year and made available for comparison or analysis by order of a circuit court or the Supreme Court of Appeals.

(2) The tabulating equipment to be used in the election shall be immediately certified by the county commission to be free from error as determined by the test. All testing material shall be placed with the certification in a sealed container and kept under individual multiple locks with individual keys for each lock. The number of locks and keys shall be the same as the number of county commissioners together with the county clerk, with each commissioner and the county clerk having a single key in his or her possession. The sealed container shall be opened to conduct the test required immediately before the start of the official count.

(3) The test shall be repeated immediately before the start of the official count and at the conclusion of the official count before the count is approved as errorless and before the election returns are approved as official.

(4) All results of all of the tests are to be immediately certified by the county commission, filed in the office of the clerk of the county commission and immediately recorded in the record book. On completion of the count, the test materials and test ballots are to be sealed, except for purposes of the canvass as provided in section twenty-eight of this article, and retained and kept under individual multiple locks and individual keys for each lock. The number of locks and keys shall be the same as the number of county commissioners together with the county clerk, with each commissioner and the county clerk having a single key in his or her possession.

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